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Filing date: **01/16/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161817
Party	Plaintiff Nextel Communications, Inc. Nextel Communications, Inc. ,
Correspondence Address	John L. Stewart, Jr. Crowell & Moring, LLP P.O. Box 14300 Washington, DC 20004-4300 UNITED STATES jstewart@crowell.com
Submission	Other Motions/Papers
Filer's Name	William J. Sauers
Filer's e-mail	wsauers@crowell.com
Signature	/William J. Sauers/
Date	01/16/2007
Attachments	Notice of Filing of Hoyes Testimony.pdf ( 15 pages )(471435 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE**  
**THE TRADEMARK TRIAL AND APPEAL BOARD**

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NEXTEL COMMUNICATIONS, INC.,	)	
	)	
Opposer,	)	
	)	Opp. No.: 91/161,817
v.	)	App. No.: 78/235,618
	)	Pot. Mark: SENSORY MARK
MOTOROLA, INC.,	)	(911 Hz tone)
	)	
Applicant.	)	
<hr/>	)	

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER'S NOTICE OF FILING OF TESTIMONY**

To: John T. Gabrielides  
Thomas Williams  
BRINKS HOFER GILSON & LIONE  
P.O. Box 10395  
Chicago, IL 60610

Opposer, Nextel Communications, Inc., herewith files the transcript of the Evidence Deposition of Mr. Thomas Hoyes taken in connection with this proceeding on August 25, 2006, pursuant to 37 C.F.R. § 2.123.

This transcript has been certified by the officer taking the deposition and it has been prepared for filing pursuant to 37 C.F.R. § 2.123(f).

January 16, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John I. Stewart, Jr.", written over a horizontal line.

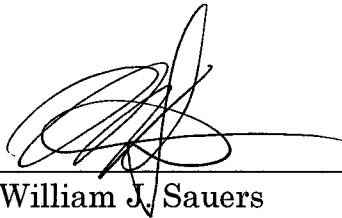
John I. Stewart, Jr.  
Attorney for Opposer

**CROWELL & MORING LLP**  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
Telephone No.: (202) 624-2500  
Facsimile No.: (202) 628-5116

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the OPPOSER'S NOTICE OF FILING OF TESTIMONY was served on counsel for the Applicant, this 16<sup>th</sup> day of January, 2007, by sending same via e-mail and First Class Mail, postage prepaid, to:

John T. Gabrielides  
Thomas Williams  
BRINKS HOFER GILSON & LIONE  
P.O. Box 10395  
Chicago, IL 60610

A handwritten signature in black ink, appearing to read 'William J. Sauers', is written over a horizontal line.

William J. Sauers

1 IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

2 Civil Division

3

4 NEXTEL COMMUNICATIONS,

5 Plaintiff,

6 v.

7 MOTOROLA, INC.,

8 Defendant.

9

10

Washington, D.C.

Friday, August 25th, 2006

11

12 Deposition of:

13 THOMAS HOYES,

14 Called for oral examination by counsel for  
15 plaintiff, pursuant to notice, at the offices of Crowell  
16 Moring, 1001 Pennsylvania Avenue, N.W., Washington, D.C.,  
17 beginning at 9:30 a.m, before Teague Gibson of Capital  
18 Reporting, a Notary Public.

19

20

\* \* \* \* \*

21

22



ORIGINAL

: Case No.:

: 91161817

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:

1 A P P E A R A N C E S

2 ON BEHALF OF THE PLAINTIFF:

3 JOHN I. STEWART, JR., ESQ.

4 WILLIAM SAUERS, ESQ.

5 Crowell Moring

6 1001 Pennsylvania Avenue, N.W.

7 Washington, D.C. 20004

8 (202) 624-2685

9

10 ON BEHALF OF THE DEFENDANT:

11 THOMAS M. WILLIAMS, ESQ.

12 Brinks Hofer Gilson & Lione

13 455 N. Cityfront Plaza Drive,

14 Suite 3600

15 Chicago, IL 60611

16 (312) 321-4200

17

18

19

20

21

22

1 C O N T E N T S

2	EXAMINATION BY:	PAGE
3	MR. SAUERS	4
4	MR. WILLIAMS	8

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12 (Exhibits - none marked)

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22

1 P R O C E E D I N G S

2 WHEREUPON:

3

4

THOMAS HOYES,

5

called for examination, having been duly sworn to

6

tell the truth, the whole truth and nothing but the

7

truth, testified as follows:

8

9

EXAMINATION BY COUNSEL FOR PLAINTIFF

10

11 BY MR. SAUERS:

12

Q Good morning.

13

A Good morning.

14

Q Can you please state your name?

15

A Tom Hoyes.

16

Q And your address?

17

A 6118 Fisher Station Road, Lothian,

18

Maryland 20711.

19

Q Where are you currently employed?

20

A Sprint/Nextel Corporation.

21

Q And how long have you been with

22

Sprint/Nextel?



1 A Nine years.

2 Q What's your current position?

3 A North region vice-president public sector.

4 Q How long have you been in that position?

5 A Four years. Pre-merger with Sprint the  
6 title was senior director, post-merger was elevated  
7 to a vice-president position.

8 Q And what are your responsibilities in that  
9 position?

10 A I'm responsible for all public sector  
11 sales within the north region. What I mean by that  
12 is north region is Virginia north, visualize the  
13 northeast corridor, and public sector is all  
14 federal, state, local, education, health care,  
15 utility sales and of course within that is public  
16 safety customers.

17 Q So Sprint/Nextel does market its services  
18 to the public safety sector?

19 A Absolutely.

20 MR. WILLIAMS: Objection, leading.

21 Q Do your responsibilities include marking  
22 Sprint/Nextel services to the public safety sector?

1           A     Absolutely.

2           Q     What types of groups, I know we already  
3     discussed some of this, but what types of groups  
4     does the public safety sector comprise?

5           A     Police, fire, we kind of -- internally we  
6     refer to it as guns and hoses, police, fire, health  
7     care, utilities, post 911 other groups have been  
8     brought in the umbrella of public safety but  
9     basically guns and hoses.

10          Q     At what governmental level does  
11     Sprint/Nextel market these services?

12          A     All levels, federal, state, local,  
13     municipal, all branches of public sector.

14          Q     Does Sprint/Nextel currently have  
15     customers in the public safety sector?

16          A     Absolutely.

17          Q     Can you identify some examples of  
18     Sprint/Nextel customers in public safety sector?

19          A     Sure.  NYPD, New York Police Department,  
20     D.C. Metropolitan Police Department, D.C. fire, New  
21     York fire, Boston Police, FBI, Secret Service, so  
22     on, so on, a lot of customers.

1 Q Does Sprint/Nextel consider Motorola to be  
2 a competitor in the public safety sector?

3 A Absolutely.

4 Q How so?

5 A We're both trying to sell devices to the  
6 same customer base.

7 MR. SAUERS: That's all the questions I have.

8 MR. WILLIAMS: Let me take a short break, look  
9 through my notes. Before we do that, however, I do  
10 want to raise a couple of objections that I raised  
11 yesterday with Mr. Rasmussen.

12 First, I want to object that Mr. Hoyes was  
13 not disclosed in Nextel's discovery responses as  
14 having any knowledge on any issues in this case  
15 including the topics in which you provided some  
16 testimony here today. And, secondly, I want to also  
17 object that Motorola was unable to conduct any  
18 discovery of Mr. Hoyes because he wasn't disclosed,  
19 therefore, we've been prejudiced in our preparation  
20 today for this testimony and we ask that the board  
21 strike this witness's testimony. And if we can take  
22 a short break, I'll see what I'm going to do on

1 cross.

2 (Off the record)

3 BY MR. WILLIAMS:

4 Q Back on the record. This is Motorola's  
5 cross-examination of the testimony witness.

6 Mr. Hoyes, you talked about Nextel and Motorola  
7 being competitors, correct?

8 A Yes.

9 Q Which products would be the competing  
10 products that you referred to?

11 A The Nextel brand, as you know we've  
12 merged, Sprint/Nextel, it would be any device -- any  
13 Nextel device that has the two-way radio built into  
14 the phone, the i870, the different models of the  
15 Nextel brand products.

16 Q Who is the manufacturer of those products?

17 A Motorola.

18 MR. WILLIAMS: That's all I have, thank you.

19 THE WITNESS: Thank you.

20 (Reading and signing was waived)

21 (9:35 a.m. the deposition was concluded)

22

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1 I, TEAGUE GIBSON, the officer before whom  
2 the foregoing deposition was taken, do hereby  
3 certify that the witness whose testimony appears in  
4 the foregoing deposition was duly sworn by me; that  
5 the testimony of said witness was taken by me in  
6 stenotypy and thereafter reduced to typewriting  
7 under my direction; that said deposition is a true  
8 record of the testimony given by said witness; that  
9 I am neither counsel for, related to, nor employed  
10 by and of the parties to the action in which this  
11 deposition was taken; and, further, that I am not a  
12 relative or employee of any counsel or attorney  
13 employed by the parties hereto, nor financially or  
14 otherwise interested in the outcome of this action.

15

16

Teague Gibson

17

Notary Public in and for

18

the District of Columbia

19

20 My commission expires:

21

June 14, 2010

22

2 I, TEAGUE GIBSON, the officer before whom  
3 the foregoing deposition was taken, do hereby  
4 certify that the witness whose testimony appears in  
5 the foregoing deposition was duly sworn by me; that  
6 the testimony of said witness was taken by me in  
7 stenotypy and thereafter reduced to typewriting  
8 under my direction; that said deposition is a true  
9 record of the testimony given by said witness; that  
10 I am neither counsel for, related to, nor employed  
11 by and of the parties to the action in which this  
12 deposition was taken; and, further, that I am not a  
13 relative or employee of any counsel or attorney  
14 employed by the parties hereto, nor financially or  
15 otherwise interested in the outcome of this action.

16 

17 Teague Gibson

Notary Public in and for  
18 the District of Columbia

19  
20  
21 My commission expires:

22 June 14, 2010

<p><b>A</b></p> <p><b>Absolutely</b> 5:19 6:1,16 7:3</p> <p><b>action</b> 9:10,14</p> <p><b>address</b> 4:16</p> <p><b>appears</b> 9:3</p> <p><b>attorney</b> 9:12</p> <p><b>August</b> 1:10</p> <p><b>Avenue</b> 1:16 2:6</p> <p><b>a.m</b> 1:17 8:21</p>	<p><b>counsel</b> 1:14 4:9 9:9,12</p> <p><b>couple</b> 7:10</p> <p><b>course</b> 5:15</p> <p><b>COURT</b> 1:1</p> <p><b>cross</b> 8:1</p> <p><b>cross-examination</b> 8:5</p> <p><b>Crowell</b> 1:15 2:5</p> <p><b>current</b> 5:2</p> <p><b>currently</b> 4:19 6:14</p> <p><b>customer</b> 7:6</p> <p><b>customers</b> 5:16 6:15,18 6:22</p>	<p><b>financially</b> 9:13</p> <p><b>fire</b> 6:5,6,20,21</p> <p><b>First</b> 7:12</p> <p><b>Fisher</b> 4:17</p> <p><b>follows</b> 4:7</p> <p><b>foregoing</b> 9:2,4</p> <p><b>Four</b> 5:5</p> <p><b>Friday</b> 1:10</p> <p><b>further</b> 9:11</p>	<p><b>level</b> 6:10</p> <p><b>levels</b> 6:12</p> <p><b>Lione</b> 2:12</p> <p><b>local</b> 5:14 6:12</p> <p><b>long</b> 4:21 5:4</p> <p><b>look</b> 7:8</p> <p><b>lot</b> 6:22</p> <p><b>Lothian</b> 4:17</p>
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